English authority, which the principal case expressly follows, is *contra*. *Ibid.* But covenants in support of an easement according to the American view run at law as well as equity. *Denman* v. *Prince*, 40 Barb. (N. Y.) 213; see 23 HARV. L. REV. 298. The principal case, therefore, not only overrules the earlier cases as to affirmative equitable servitudes, but adopts the English view that an easement does not make sufficient privity of estate to permit the burden of a covenant to run at law.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — EFFECT OF TEMPORARY BREACH NOT CONTRIBUTING TO LOSS. — The insured in his application agreed not to engage in the business of handling electric wires and dynamos for one year following the date of the policy. The policy expressly made the application a part of the contract of insurance. The insured did enter the business during the year, and his death occurred while so engaged after the expiration of the year. *Held*, that the beneficiary may recover. *Edmonds* v. *Mutual Life Insurance Co.*, 144 N. W. 718 (S. D.).

The breach of a material representation or a warranty as to a present fact, though not contributing to the loss, avoids an insurance policy. *McGowan* v. *Supreme Court of Independent Order of Foresters*, 104 Wis. 173, 80 N. W. 603; *Johnson* v. *Maine & New Brunswick Ins. Co.*, 83 Me. 182, 22 Atl. 107. The same rule applies to the breach of a condition or promissory warranty continuing to the time of the loss. *Norwaysz* v. *Thuringia Ins. Co.*, 204 Ill. 334, 68 N. E. 551; *Hill* v. *Middlesex Fire Ins. Co.*, 174 Mass. 542, 55 N. E. 319. *Contra*, *Joyce* v. *Maine Ins. Co.*, 45 Me. 168. Likewise the policy is void if the breach existed from the outset even if it ceased before and had no causal connection with the loss. *Georgia Home Ins. Co.* v. *Rosenfield*, 95 Fed. 358. When such a temporary breach, however, arises after the issuance of the policy, there is a conflict of authority. The English courts hold that the policy is void. *De Hahn* v. *Hartley*, 1 T. R. 343; *Birrell* v. *Dryer*, 9 A. C. 345; STAT. 6 EDW., VII, c. 41, § 34 (2). The better American view is in accord. *Douglas* v. *Knickerbocker Life Ins. Co.*, 83 N. Y. 492; *Moore* v. *Phoenix Ins. Co.*, 62 N. H. 240; *Kyte* v. *Commercial Union Ins. Co.*, 149 Mass. 116, 21 N. E. 361. Many cases apparently holding that the policy is merely suspended are distinguishable because the policy expressly so provided or no real breach occurred. *Union Life Ins. Co.* v. *Hughes' Adm'r.*, 110 Ky. 26, 60 S. W. 850; *Kircher* v. *Milwaukee Mutual Ins. Co.*, 74 Wis. 470, 43 N. W. 487. But some courts clearly hold with the principal case. *Sumter Tobacco Co.* v. *Phoenix Ins. Co.*, 76 S. C. 76, 56 S. E. 654; *Insurance Co. of North America* v. *Pitts*, 88 Miss. 587, 41 So. 5. As the application in the principal case was incorporated as a part of the insurance contract, its promises become warranties in the policy. *Mutual Life Ins. Co.* v. *Kelly*, 114 Fed. 268. The effect then is the same as if the policy expressly provided for forfeiture on a breach by the insured. *Brignac* v. *Pacific Mutual Life Ins. Co.*, 112 La. 574, 36 So. 595. The view in accord with the principal case, therefore, disregards the stipulations of the contract and causes the insurance to be continued on a different basis from that intended. A statute rather than judicial legislation seems the proper way to prevent forfeiture in such cases, if that be desired. See HOWELL'S MICH. STATS. § 8348; IOWA CODE, § 1743.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACTS — EMPLOYEES PROTECTED BY ACT. — The plaintiff's intestate, a locomotive fireman, had prepared his engine for a trip between two points within a state, the train containing cars which had just arrived from another state. While on the company's premises, but before the journey had actually begun, the deceased was run over and killed. The accident was due to the negligence of a fellow servant. Action was brought, but not in proper form for

recovery under the Federal Employers' Liability Act. *Held*, that the deceased was engaged in interstate commerce. *North Carolina R. Co.* v. *Zachary*, 34 Sup. Ct. 305.

The plaintiff was assisting in the repair of a railway locomotive, which was regularly used in interstate commerce, but had been under repair for three weeks. Due to the negligence of a fellow servant, the plaintiff was injured, and sued the defendant company under the Federal Employers' Liability Act. *Held*, that the plaintiff was engaged in interstate commerce within the terms of the act. *Law* v. *Illinois Cent. R. Co.*, 208 Fed. 869 (C. C. A., 6th Cir.).

The Federal Act of 1908 abolishes the fellow-servant rule for employees of a railroad engaged in interstate commerce, while themselves engaged in such commerce. 35 STAT., 65, c. 149. Just when an employee is so engaged is a difficult question. Whether the work in question was part of the interstate commerce in which the carrier was engaged was suggested as a test by the majority of the court in *Pederson* v. *Delaware, L. & W. R. Co.*, 229 U. S. 146, 152. An employee has been held within the act when on the employer's premises but before actually beginning work. *Lamphere* v. *Oregon R. & N. Co.*, 196 Fed. 336. In the first of the principal cases, the employee had already begun work. An employee piloting an engine to a track where it will be attached to an interstate train is engaged in interstate commerce. *Norfolk & W. Ry. Co.* v. *Earnest*, 229 U. S. 114. That the deceased was likewise engaged seems clear. The opinion is also authority for the proposition that hauling empty cars from one state to another is interstate commerce. This is in harmony with *dicta* as to the Safety Appliance Act. See *Johnson* v. *Southern Pac. R. Co.*, 196 U. S. 1, 21; *Voelker* v. *Chicago, M. & St. P. Ry. Co.*, 116 Fed. 867, 874. Likewise a caretaker of a dead engine on an interstate journey was held to be within the protection of the Liability Act. *Atlantic, etc. R. Co.* v. *Jones*, 63 So. 693 (Ala. Ct. App.). Finally the Supreme Court answers in the affirmative the question as to whether an employee when injured must bring his action under the federal statute. See THORNTON, EMPLOYERS' LIABILITY AND SAFETY APPLIANCE ACTS, § 19. The second case also seems correct. Workmen engaged in repairs on roads and bridges have been held within the act. *Pederson* v. *Delaware, L. & W. Ry.*, *supra; Zikos* v. *Oregon R. & N. Co.*, 179 Fed. 893; *Central R. Co. of N. J.* v. *Colasurdo*, 192 Fed. 901. *Contra, Taylor* v. *Southern Ry. Co.*, 178 Fed. 380. Temporary repairs on a car engaged in interstate service are treated in the same way. *Darr* v. *Baltimore & O. R. Co.*, 197 Fed. 665. If the instrumentality has never been used in interstate commerce the act could be held not to apply. But once in, it seems hard to find a point where the engine or car, because of temporary withdrawal, loses its interstate character. The same result is reached in *Northern Pac. Ry. Co.* v. *Maerkle*, 198 Fed. 1. *Heimbach* v. *Lehigh Valley R. Co.*, 197 Fed. 579, *contra*, depends upon *Pederson* v. *Delaware, L. & W. R. Co.*, 197 Fed. 537, since overruled by the Supreme Court decision, *supra*. See 26 HARV. L. REV. 354.

LANDLORD AND TENANT — CONDITION OF PREMISES — LESSOR'S LIABILITY TO GUEST IN LEASED HOTEL. — The defendant was owner of a hotel and leased it for one year. At the time of the lease there was a concealed defect in the elevator of which the defendant should have known in the exercise of due care. The lessee, knowing of the defect, continued to operate the elevator in its defective condition. The plaintiff, a guest at the hotel, was injured as a result of this defect. *Held*, that the defendant is liable. *Colorado Mortgage & Investment Co.* v. *Giacomini*, 136 Pac. (Col.) 1039.

In the absence of an express agreement the lessor does not warrant the condition of the premises. *Bowe* v. *Hunking*, 135 Mass. 380; *Towne* v. *Thompson*, 68 N. H. 317, 44 Atl. 492. But the landlord is bound to warn the tenant against